IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 31168 of 2006(I)

PETITIONER:

BAIJU GEORGE KADAVIL,
PALLIPPURAM MURI, PALLIPPURAM VILLAGE,
CHERTHALA TALUK.

BY ADV. SRI.BENOY K.KADAVAN

RESPONDENTS:

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1. STATE BANK OF INDIA,
ALAPPUZHA BRANCH, REPRESENTED BY ITS MANAGER.

2. VARKEY VARGHESE,
KADAVIL, GREEN COTTAGE, PALLIPPURAM P.O.,
CHERTHALA.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.31168 OF 2006

DATED THIS THE 29th DAY OF NOVEMBER, 2006

JUDGMENT

Petitioner is the judgment debtor. First respondent is the decree holder. Petitioner is challenging Exts.P5 and P6 orders dismissing his application to set aside the exparte order and for permission to file an objection to the draft sale papers. The case of petitioner is that he was not aware of the execution petition and immediately on coming to know about the execution petition, he filed Exts.P3 and P4 applications, which were dismissed under Exts.P5 and P6 orders. The executing Court dismissed the applications holding that the exparte order was passed on 29.9.04 and as provided under Rule 106(3)of Order XXI of C.P.C., petition was not filed within thirty days from the date on which date the order was passed exparte and therefore the petition is not maintainable. This Petition is filed under Article 227 of Constitution

of India challenging the order.

2. Learned Counsel appearing for petitioner and first respondent were heard.

3. Sub rule 3 of rule 106 of Order XXI of Code of Civil Procedure enables a party to file an application as provided under Sub rule 1, within thirty days from the date of the order or in the case of an exparte order and notice was not duly served, within thirty days from the date when the applicant had knowledge of the order. The dismissal of the application was for the sole reason that it was beyond the period of thirty days from the date of the order. The case of petitioner was that he did not receive any notice and was not aware of the order earlier and the petition was filed within thirty days of the date of knowledge. Hence the dismissal on the ground that it was not filed within thirty days is not sustainable.

4. E.P. now stands posted on 10.01.07. Exts.P5 and P6 orders are quashed. Petitioner is permitted to file objection to the draft sale

paper. Petitioner shall file objection if any to the draft sale paper within ten days from today. The executing Court may pass appropriate order considering the objection in accordance with second proviso to Sub Rule 2 of Rule 66 of Order XXI of C.P.C.

M.SASIDHARAN NAMBIAR,JUDGE

Acd